



October 10, 2001

Mr. Doug Lowe
Criminal District Attorney
County of Anderson
500 North Church
Palestine, Texas 75801

OR2000-4581

Dear Mr. Lowe:

You ask whether certain information is subject to required public disclosure under the Public Information Act, chapter 552 of the Government Code. Your request was assigned ID# 153111.

The Palestine Police Department (the "department"), which you represent, received a request for information relating to specified assault charges. You contend that the requested information is excepted from public disclosure under sections 552.101, 552.103, and 552.108 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

First, you ask whether the department must comply with the request because the department has turned the information over to the Anderson County Criminal District Attorney's Office. Section 552.002(a) of the Government Code provides that "public information" means information that is collected, assembled, or maintained under a law or ordinance or in connection with the transaction of official business by a governmental body or for a governmental body and the governmental body owns the information or has a right of access. Therefore, if the department maintains the information or has a right of access to the requested information, the department must comply with the request for information. Because you have submitted the requested information, we will address your asserted exceptions.

Initially, you assert that the information is excepted under section 552.101 in conjunction with section 551.076 of the Government Code. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Section 551.076 exempts a governmental body from the requirement of holding an open meeting, when the subject deliberated is "the deployment, or specific

occasions for implementation, of security personnel or devices.” Gov’t Code § 551.076. Records of such meetings must be kept in the form of a tape recording or certified agenda. Gov’t Code § 551.103. These records are available for public inspection only under court order. Gov’t Code § 551.104(c). However, the fact that a subject was discussed in an executive meeting does not make information related to that discussion confidential. Open Records Decision No. 485 (1987). Thus, we conclude that section 551.076 is not a confidentiality provision that makes the submitted information confidential. Therefore, you may not withhold the submitted information under section 552.101 of the Government Code.

Further, we note that the submitted information consists of a completed report that is public pursuant to section 552.022(a)(1) of the Government Code. Section 552.022(a) provides in pertinent part:

Without limiting the amount or kind of information that is public information under this chapter, the following categories of information are public information and not excepted from required disclosure under this chapter unless they are expressly confidential under other law:

- (1) a completed report, audit, evaluation, or investigation made of, for, or by a governmental body, except as provided by Section 552.108[.]

Section 552.103 is a discretionary exception under the Public Information Act and is, therefore, not “other law” that makes the submitted information confidential. *See* Open Records Decision No. 551 (1990) (statutory predecessor to section 552.103 serves only to protect a governmental body’s position in litigation and does not itself make information confidential). Thus, you may not withhold the submitted information under section 552.103 of the Government Code. Next, we will address the applicability of section 552.108 of the Government Code.

Section 552.108 of the Government Code provides in pertinent part:

- (a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

- (1) release of the information would interfere with the detection, investigation or prosecution of crime[.]

....

- (b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution[.]

Gov't Code § 552.108(a)(1), (b)(1). Generally, a governmental body claiming section 552.108 must reasonably explain, if the information does not supply the explanation on its face, how and why the release of the requested information would interfere with law enforcement. See Gov't Code §§ 552.108(a)(1), (b)(1), .301(e)(1)(a); see also *Ex parte Pruitt*, 551 S.W.2d 706 (Tex. 1977). Information that relates to a pending criminal investigation or prosecution is an example of information that is presumed to interfere with the detection, investigation, or prosecution of crime under sections 552.108(a)(1) and 552.108(b)(1). You inform this office that the submitted information pertains to an assault case for which one suspect pled guilty and the other suspect was found guilty by the judge. You also state that the Anderson County Criminal District Attorney's Office considers these cases closed. You state that if released the information would interfere with the proper law enforcement function, prosecution, or crime prevention. You also state that disclosure of this information about a family violence case will interfere with law enforcement for similar crimes. However, the fact that a case involves family violence does not, by itself, demonstrate that releasing the information would interfere with law enforcement. See Open Records Decision No. 611 at 1-2 (1992). After reviewing the submitted information and your representations, we conclude that you have failed to demonstrate how release of this closed case would interfere with the detection, investigation or prosecution of crime. Thus, we conclude that the submitted information is not excepted under section 552.108 of the Government Code.

You also express concern about releasing the submitted information because it pertains to family violence and could jeopardize the right to privacy. Section 552.101 of the Government Code also protects information encompassed by the common law right of privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 683-85 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). The doctrine of common law privacy protects information that contains highly intimate or embarrassing facts about a person's private affairs such that its release would be highly objectionable to a reasonable person and the information must be of no legitimate concern to the public. However, information about family violence is not generally excepted under common law privacy. See Open Records Decision No. 611 at 1-2 (1992). After reviewing the submitted information, we conclude that most of the submitted information does not contain such highly intimate or embarrassing facts such that release would be highly objectionable to a reasonable person.

However, the submitted information does contain some criminal history record information. Where an individual's criminal history information has been compiled by a governmental entity, the information takes on a character that implicates the individual's right to privacy. See *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, 489 U.S. 749 (1989). Thus, we conclude that you must withhold the marked information under common law privacy as encompassed by section 552.101 of the Government Code.

Further, the submitted information contains a driver's license number which is excepted under section 552.130 of the Government Code. Section 552.130(a) of the Government Code excepts from disclosure information that relates to a motor vehicle operator's or driver's license or permit issued by an agency of this state or a motor vehicle title or registration issued by an agency of this state. Therefore, you must withhold the marked driver's license number under section 552.130(a) of the Government Code.

We note, however, that the requestor has a special right of access to her driver's license number under section 552.023. Section 552.023 of the Government Code grants a special right of access to a person or a person's authorized representative to records that contain information relating to the person that are protected from public disclosure by laws intended to protect that person's privacy interests. Therefore, you may not withhold the requestor's driver's license number.

Further, the submitted information contains social security numbers. The requestor also has a right of access to her social security number under section 552.023 and, therefore, the department must release the requestor's social security number. As for the remaining social security number, social security numbers and related records are excepted from disclosure under section 552.101 in conjunction with 1990 amendments to the federal Social Security Act, 42 U.S.C. § 405(c)(2)(C)(viii)(I), *if the social security number information was obtained or is maintained by a governmental body pursuant to any provision of law enacted on or after October 1, 1990. See Open Records Decision No. 622 (1994).* However, it is not apparent to us that the social security number was obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. You have cited no law, nor are we aware of any law, enacted on or after October 1, 1990, that authorizes the department to obtain or maintain social security numbers. Therefore, we have no basis for concluding that the social security number at issue was obtained or is maintained pursuant to such a statute and is, therefore, confidential under section 405(c)(2)(C)(viii)(I). We caution the department, however, that section 552.352 of the Government Code imposes criminal penalties for the release of confidential information. Gov't Code § 552.352. Prior to releasing the social security number, the department should ensure that this number was not obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990.

In conclusion, the department must withhold the marked information under section 552.101 of the Government Code in conjunction with common law privacy. The department must also withhold the marked driver's license number under section 552.130 of the Government Code. Further, the department must withhold the social security number if obtained or is maintained by the department pursuant to any provision of law enacted on or after October 1, 1990. Having found no other exceptions applicable to the submitted information, the department must release the remaining submitted information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

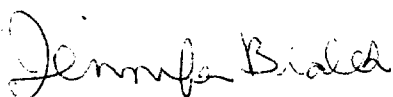
If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Dept. of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Jennifer Bialek
Assistant Attorney General
Open Records Division

JHB/sdk

Ref: ID# 153111

Enc: Submitted documents

c: Ms. Nedra D. Pounds
302 Shamrock
Palestine, Texas 75803
(w/o enclosures)